

Feb 23, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CODY MICHAEL COOK,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 2:16-cv-00414-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 20, 21

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 20, 21. The parties consented to proceed before a magistrate judge. ECF No. 3. The Court, having reviewed the administrative record and the parties' briefing, is fully informed. For the reasons discussed below, the Court denies Plaintiff's motion (ECF No. 20) and grants Defendant's motion (ECF No. 21).

JURISDICTION

The Court has jurisdiction over this case pursuant to 42 U.S.C. § 1383(c)(3).

STANDARD OF REVIEW

A district court’s review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner’s decision will be disturbed “only if it is not supported by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). “Substantial evidence” means “relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence equates to “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and citation omitted). In determining whether the standard has been satisfied, a reviewing court must consider the entire record as a whole rather than searching for supporting evidence in isolation. *Id.*

In reviewing a denial of benefits, a district court may not substitute its judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001). If the evidence in the record “is susceptible to more than one rational interpretation, [the court] must uphold the ALJ’s findings if they are supported by inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not reverse an

1 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless
2 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."
3 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's
4 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
5 *Sanders*, 556 U.S. 396, 409-10 (2009).

6 **FIVE-STEP EVALUATION PROCESS**

7 A claimant must satisfy two conditions to be considered "disabled" within
8 the meaning of the Social Security Act. First, the claimant must be "unable to
9 engage in any substantial gainful activity by reason of any medically determinable
10 physical or mental impairment which can be expected to result in death or which
11 has lasted or can be expected to last for a continuous period of not less than twelve
12 months." 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be
13 "of such severity that he is not only unable to do his previous work[,] but cannot,
14 considering his age, education, and work experience, engage in any other kind of
15 substantial gainful work which exists in the national economy." 42 U.S.C. §
16 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §
19 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant's work
20 activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial

1 gainful activity,” the Commissioner must find that the claimant is not disabled. 20
2 C.F.R. § 416.920(b).

3 If the claimant is not engaged in substantial gainful activity, the analysis
4 proceeds to step two. At this step, the Commissioner considers the severity of the
5 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
6 “any impairment or combination of impairments which significantly limits [his or
7 her] physical or mental ability to do basic work activities,” the analysis proceeds to
8 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy
9 this severity threshold, however, the Commissioner must find that the claimant is
10 not disabled. 20 C.F.R. § 416.920(c).

11 At step three, the Commissioner compares the claimant’s impairment to
12 severe impairments recognized by the Commissioner to be so severe as to preclude
13 a person from engaging in substantial gainful activity. 20 C.F.R. §
14 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
15 enumerated impairments, the Commissioner must find the claimant disabled and
16 award benefits. 20 C.F.R. § 416.920(d).

17 If the severity of the claimant’s impairment does not meet or exceed the
18 severity of the enumerated impairments, the Commissioner must pause to assess
19 the claimant’s “residual functional capacity.” Residual functional capacity (RFC),
20 defined generally as the claimant’s ability to perform physical and mental work

activities on a sustained basis despite his or her limitations, 20 C.F.R. § 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

At step four, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing work that he or she has performed in the past (past relevant work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of performing such work, the analysis proceeds to step five.

At step five, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing other work in the national economy. 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational factors such as the claimant's age, education and past work experience. 20 C.F.R. § 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, analysis concludes with a finding that the claimant is disabled and is therefore entitled to benefits. 20 C.F.R. § 416.920(g)(1).

The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is

1 capable of performing other work; and (2) such work “exists in significant
2 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*,
3 700 F.3d 386, 389 (9th Cir. 2012).

4 **ALJ’S FINDINGS**

5 Plaintiff filed an application for Title XVI supplemental security income
6 benefits on July 28, 2010, alleging an amended onset date of July 28, 2010. Tr.
7 276-80. The application was denied initially, Tr. 165-68, and on reconsideration,
8 Tr. 172-79. Plaintiff appeared at a hearing before an administrative law judge
9 (ALJ) on April 11, 2013. Tr. 52-109. On April 26, 2013, the ALJ denied
10 Plaintiff’s claim. Tr. 142-54. On June 4, 2014, the Appeals Council remanded the
11 matter to the ALJ. Tr. 158-62. Plaintiff appeared at a second hearing before an
12 ALJ on March 2, 2015. Tr. 696-732. The ALJ conducted a supplemental hearing
13 on July 14, 2015. Tr. 110-21. On September 9, 2015, the ALJ denied Plaintiff’s
14 claim. Tr. 17-36.

15 At step one of the sequential evaluation process, the ALJ found Plaintiff had
16 engaged in substantial gainful activity since July 28, 2010, but that there had been
17 a continuous 12-month period during which Plaintiff did not engage in substantial
18 gainful activity. Tr. 20-21. At step two, the ALJ found Plaintiff has the following
19 severe impairments: major depressive disorder; anxiety disorder; personality
20 disorder with borderline traits; and methamphetamines, benzodiazepines, and

1 marijuana substance use disorder. Tr. 21. At step three, the ALJ found Plaintiff
2 does not have an impairment or combination of impairments that meets or
3 medically equals the severity of a listed impairment. Tr. 22. The ALJ then
4 concluded that Plaintiff has the RFC to perform a full range of work at all
5 exertional levels, but with the following non-exertional mental limitations:

6 The claimant is able to understand, remember, and carry out simple routine
7 work instructions and work tasks; no interaction with the general public; can
8 work around co-workers, but without close cooperation in performing job
9 tasks; and can handle occasional supervision but no over-the-shoulder type
10 of supervision. In addition, the claimant has mental symptomatology and
takes prescription medication for this symptomatology: however, despite any
side effects of the medicine, the claimant would be able to remain
reasonably attentive and responsive in a work setting and would be able to
carry out normal work assignments satisfactorily [sic].

11 Tr. 24.

12 At step four, the ALJ found Plaintiff is able to perform past relevant work as
13 a farm machine operator. Tr. 34. Alternatively, at step five, the ALJ found there
14 are jobs that exist in significant numbers in the national economy that Plaintiff can
15 perform, such as laundry worker II, production helper, small parts assembler,
16 sorter, and printed circuit board assembly. Tr. 35. On November 29, 2016, the
17 Appeals Council denied review of the ALJ's decision, Tr. 1-6, making the ALJ's
18 decision the Commissioner's final decision for purposes of judicial review. *See* 42
19 U.S.C. § 1383(c)(3).

1 **ISSUES**

2 Plaintiff seeks judicial review of the Commissioner’s final decision denying
3 him supplemental security income benefits under Title XVI of the Social Security
4 Act. Plaintiff raises the following issues for review:

- 5 1. Whether the ALJ properly evaluated the medical opinion evidence;
6 and
7 2. Whether the ALJ properly evaluated Plaintiff’s symptom complaints.
8 ECF No. 20 at 5-21.

9 **DISCUSSION**

10 **A. Medical Opinion Evidence**

11 Plaintiff challenges the ALJ’s consideration of the medical opinions of Dr.
12 Burdge, Dr. Cools, Dr. Colby, Dr. Duris, Dr. MacLennan, Dr. Veraldi, Dr. Fitterer,
13 Dr. Beaty, Ms. Hevly, and Mr. Aronsohn. ECF No. 20 at 5-20.

14 There are three types of physicians: “(1) those who treat the claimant
15 (treating physicians); (2) those who examine but do not treat the claimant
16 (examining physicians); and (3) those who neither examine nor treat the claimant
17 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”
18 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).
19 Generally, a treating physician’s opinion carries more weight than an examining
20 physician’s, and an examining physician’s opinion carries more weight than a

1 reviewing physician's. *Id.* at 1202. "In addition, the regulations give more weight
2 to opinions that are explained than to those that are not, and to the opinions of
3 specialists concerning matters relating to their specialty over that of
4 nonspecialists." *Id.* (citations omitted).

5 If a treating or examining physician's opinion is uncontradicted, the ALJ
6 may reject it only by offering "clear and convincing reasons that are supported by
7 substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).
8 "However, the ALJ need not accept the opinion of any physician, including a
9 treating physician, if that opinion is brief, conclusory and inadequately supported
10 by clinical findings." *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228
11 (9th Cir. 2009) (internal quotation marks and brackets omitted). "If a treating or
12 examining doctor's opinion is contradicted by another doctor's opinion, an ALJ
13 may only reject it by providing specific and legitimate reasons that are supported
14 by substantial evidence." *Bayliss*, 427 F.3d at 1216 (citing *Lester v. Chater*, 81
15 F.3d 821, 830-831 (9th Cir. 1995)).

16 *1. Aaron Burdge, Ph.D. – 2011 Opinion*

17 Dr. Burdge examined Plaintiff on November 10, 2011, and opined Plaintiff
18 had difficulty concentrating; that his irritability would lead to conflicts with others;
19 that his symptoms could be significantly improved with proper use of psychotropic
20 medications; that he needed a high degree of supervision to address his difficulty

1 focusing; that employment tended to subject him to an overly stressful
2 environment which may exacerbate his symptoms; that he may be able to function
3 in an entry-level work position but would require special accommodations for his
4 mood and behavior-related symptoms; that at the time of evaluation Plaintiff was
5 unlikely to function adequately in a work setting; and that Plaintiff would be more
6 likely to maintain long-term employment with job skills coaching. Tr. 413-16.
7 The ALJ gave great weight to Dr. Burdge's opinions that Plaintiff's symptoms
8 would improve with psychiatric medications and that overly stressful environments
9 may exacerbate Plaintiff's symptoms, but gave Dr. Burdge's remaining opinions
10 little weight. Tr. 30. Because Dr. Burdge's opinions were contradicted by Dr.
11 Veraldi, Tr. 650-66, 702-12, and Dr. Cools, Tr. 56-78, the ALJ was required to
12 provide specific and legitimate reasons for rejecting the opinions. *Bayliss*, 427
13 F.3d at 1216; *see also Widmark v. Barnhart*, 454 F.3d 1063, 1066-67 (9th Cir.
14 2006). Here, Plaintiff challenges the ALJ's treatment of Dr. Burdge's credited
15 opinions, as well as the ALJ's rejection of the remainder of Dr. Burdge's opinions.
16 ECF No. 5-9.

17 *a. Credited Medical Opinions*

18 The ALJ assigned great weight to Dr. Burdge's opinions that Plaintiff's
19 symptoms would improve with psychiatric medications and that overly stressful
20 environments may exacerbate Plaintiff's symptoms. Tr. 30. Plaintiff challenges

1 the ALJ's reliance on these opinions to support a finding of nondisability. ECF
2 No. 20 at 7-8. Dr. Burdge opined Plaintiff's symptoms "can be somewhat
3 effectively managed through medication" and "there is question as to whether
4 medication can make his symptoms completely manageable." Tr. 414. Plaintiff
5 argues Dr. Burdge's opinions indicate Plaintiff faces only minor prospective
6 improvements in his symptoms and therefore this evidence supports a finding of
7 disability. ECF No. 20 at 7-8. In support of this perspective on the evidence,
8 Plaintiff notes Dr. Burdge opined Plaintiff was unlikely to function in a work
9 setting until his symptoms were managed more effectively. ECF No. 20 at 6-8
10 (citing Tr. 447).

11 A rational interpretation of Dr. Burdge's opinions, as adopted by the ALJ, is
12 that Plaintiff's symptoms improve with treatment and therefore do not support a
13 finding of disability. Tr. 30. The ALJ's interpretation is supported by other
14 evidence in the record. For example, Dr. Burdge indicated in the same report that
15 Plaintiff's irritability and lack of impulse control "could be *significantly* improved
16 with use of proper psychotropic medications." Tr. 414 (emphasis added).
17 Additionally, Dr. Cools testified that Plaintiff's anxiety and depression are
18 controllable with medication, to the point Dr. Cools did not believe they
19 constituted severe impairments, and that Plaintiff's behavior was voluntary. Tr.
20 74-75. Even if evidence could be interpreted more favorably to Plaintiff, if it is

1 susceptible to more than one rational interpretation, and therefore the ALJ's
2 ultimate conclusion must be upheld. *Burch v. Barnhart*, 400 F.3d 676, 679 (9th
3 Cir. 2005). Because the ALJ's interpretation of the evidence is rational, the Court
4 must uphold the ALJ's finding.

5 Furthermore, the RFC adequately addresses Dr. Burdge's credited opinions.
6 The RFC limits Plaintiff to no interaction with the public, no close cooperation
7 with coworkers in performing job tasks, occasional supervision. Tr. 24. These
8 limitations address Dr. Burdge's opinion that overly stressful environments may
9 exacerbate Plaintiff's symptoms. Tr. 446. Additionally, the RFC notes Plaintiff
10 takes medication to address his mental impairments, and finds Plaintiff would be
11 able to carry out normal work assignments satisfactorily despite medication side
12 effects. Tr. 24. This component of the RFC addresses the Dr. Burdge's opinion
13 that Plaintiff's symptoms would improve with medication. Tr. 446. The ALJ's
14 findings are supported by substantial evidence.

15 *b. Discounted Medical Opinions*

16 Next, the ALJ rejected Dr. Burdge's opinions that Plaintiff had difficulty
17 concentrating; that his irritability would lead to conflicts with others; that he
18 needed a high degree of supervision to address his difficulty focusing; that he may
19 be able to function in an entry-level work position but would require special
20 accommodations for his mood and behavior-related symptoms; that at the time of

1 evaluation Plaintiff was unlikely to function adequately in a work setting; and that
2 Plaintiff would be more likely to maintain long-term employment with job skills
3 coaching. Tr. 413-16. The ALJ rejected the opinions for several reasons; Plaintiff
4 challenges only one.¹

5 First, the ALJ found these opinions were not supported by the record as a
6 whole. Tr. 30. An ALJ may discredit physicians' opinions that are unsupported by
7 the record as a whole. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195

8 _____
9 ¹ Plaintiff challenged the ALJ's finding that Dr. Burdge's opinion was based
10 heavily on Plaintiff's self-reports, and failed to challenge the ALJ's findings about
11 consistency with the longitudinal record, a lack of internal support for Dr.
12 Burdge's findings, and inconsistencies with Plaintiff's activities of daily living.
13 ECF No. 20 at 5-9. Thus, any challenge to those findings is waived. *See Kim v.*
14 *Kang*, 154 F.3d 996, 1000 (9th Cir. 1998) (the Court may not consider on appeal
15 issues not "specifically and distinctly argued" in the party's opening brief);
16 *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008)
17 (determining Court may decline to address on the merits issues not argued with
18 specificity). However, the Court conducted an independent review of the ALJ's
19 decision and finds the ALJ's opinion is supported by substantial evidence in the
20 record.

1 (9th Cir. 2004). Moreover, the extent to which a medical source is “familiar with
2 the other information in [the claimant’s] case record” is relevant in assessing the
3 weight of that source’s medical opinion. *See* 20 C.F.R. § 416.927(c)(6). Here, the
4 ALJ credited the opinions of Dr. Veraldi and Dr. Cools, who both reviewed the
5 record as a whole and gave medical opinions contrary to Dr. Burdge’s opinions.
6 Tr. 28-30.

7 Although unchallenged, the Court finds on independent review that the
8 ALJ’s given reasons are supported by substantial evidence. For example, Dr.
9 Cools testified that Plaintiff’s anxiety and depression are controllable with
10 medication, to the point Dr. Cools did not believe they constituted severe
11 impairments, and that Plaintiff’s behavior was voluntary. Tr. 74-75. Dr. Veraldi
12 testified that she could not separate the effects of Plaintiff’s substance abuse from
13 his mental impairments. Tr. 660. Not only was Dr. Veraldi’s opinion contrary to
14 Dr. Burdge’s findings, but Plaintiff also failed to disclose his substance abuse to
15 Dr. Burdge. Tr. 414. The ALJ did not err in discrediting Dr. Burdge’s 2011
16 opinions for not being supported by the longitudinal record.

17 Second, the ALJ found Dr. Burdge did not adequately explain the basis for
18 certain findings and that Dr. Burdge’s findings were internally inconsistent. Tr.
19 30. Relevant factors to evaluating any medical opinion include the amount of
20 relevant evidence that supports the opinion, the quality of the explanation provided

1 in the opinion, and the consistency of the medical opinion with the record as a
2 whole. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007); *Orn v. Astrue*,
3 495 F.3d 625, 631 (9th Cir. 2007). Moreover, a physician's opinion may be
4 rejected if it is unsupported by the physician's treatment notes. *See Connett v.*
5 *Barnhart*, 340 F.3d 871, 875 (9th Cir. 2003).

6 The ALJ noted that Dr. Burdge based his opinions on examination results
7 that indicated Plaintiff did not give full effort in participating in the examination.
8 Tr. 30. During the mental status examination, Dr. Burdge observed Plaintiff could
9 repeat only two digits in reverse. Tr. 416. However, Dr. Burdge diagnosed no
10 cognitive impairment. Tr. 413-15. The ALJ reasonably concluded that this result
11 in Plaintiff's mental status examination should have indicated a serious cognitive
12 impairment, and absent such a finding, indicated Plaintiff gave "less-than-full
13 effort" during the examination. Tr. 30. That Dr. Burdge's findings were
14 unexplained and inconsistent with his own observations were specific and
15 legitimate, and unchallenged, reasons to reject them.

16 Third, the ALJ discounted Dr. Burdge's opinions as being inconsistent with
17 Plaintiff's reported daily activities. Tr. 30. An ALJ may discount an opinion that
18 is inconsistent with a claimant's reported functioning. *Morgan v. Comm'r of Soc.*
19 *Sec Admin.*, 169 F.3d 595, 601-02 (9th Cir. 1999). The ALJ noted that despite
20 Plaintiff's self-reported severe impairments, Plaintiff also reported to Dr. Burdge

1 that he cared for his infant son and was able to perform household chores. Tr. 30,
2 414. This was a specific and legitimate, and unchallenged, reason to discredit Dr.
3 Burdge's findings.

4 Finally, the ALJ discredited Dr. Burdge's remaining opinions because they
5 were based on Plaintiff's subjective self-reports. Tr. 30. A physician's opinion
6 may be rejected if it based on a claimant's subjective complaints which were
7 properly discounted. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001);
8 *Morgan*, 169 F.3d at 602; *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989).

9 "[W]hen an opinion is not more heavily based on a patient's self-reports than on
10 clinical observations, [this] is no evidentiary basis for rejecting the opinion."

11 *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014).

12 As discussed *infra*, the ALJ gave several legally sufficient reasons for
13 rejecting Plaintiff's symptom testimony. Plaintiff argues that because Dr. Burdge
14 performed an objective mental status examination, the ALJ unreasonably
15 concluded that Dr. Burdge "relied heavily" on Plaintiff's self-reports. ECF No. 20
16 at 8. However, in light of the ALJ's observations about Plaintiff's daily activities
17 being inconsistent with Plaintiff's reported limitations and the mixed results of the
18 mental status examination, the ALJ reasonably concluded that the level of
19 impairment Dr. Burdge opined was not proportional to his findings and was
20 therefore heavily based on Plaintiff's self-reports. Tr. 30. Because the ALJ

1 provided legally sufficient reasons to discredit Plaintiff's symptom complaints, Dr.
2 Burdge's reliance on Plaintiff's subjective symptom complaints was a specific and
3 legitimate reason to discredit Dr. Burdge's opinions. The ALJ's conclusion is
4 supported by substantial evidence.

5 *2. Aaron Burdge, Ph. D. – 2013 Opinion*

6 Dr. Burdge examined Plaintiff again on September 12, 2013, and opined
7 Plaintiff had moderate limitations in his ability to perform activities within a
8 schedule, learn new tasks, adapt to changes in a routine work setting, ask simple
9 questions or request assistance, and communicate and perform effectively in a
10 work setting; and that Plaintiff had severe restrictions in his ability to complete a
11 normal work day and work week without interruptions from psychologically based
12 symptoms, maintain appropriate behavior in a work setting, and set realistic goals
13 and plan independently. Tr. 488-92. The ALJ gave significant weight to Dr.
14 Burdge's opinions that Plaintiff has mild limitation in his ability to understand,
15 remember, and persist in tasks by following very short and simple instructions, and
16 mild limitation in his ability to be aware of normal hazards and take appropriate
17 precautions, but gave little weight to the remainder of Dr. Burdge's opinions. Tr.
18 31. Because Dr. Burdge's opinions were contradicted by Dr. Veraldi, Tr. 650-66,
19 702-12, and Dr. Cools, Tr. 56-78, the ALJ was required to provide specific and
20

1 legitimate reasons for rejecting the opinions. *Bayliss*, 427 F.3d at 1216; *see also*
2 *Widmark*, 454 F.3d at 1066-67.

3 First, the ALJ found Dr. Burdge's opinions were inconsistent with the record
4 as a whole. Tr. 31. ECF No. 20 at 10-11. Relevant factors to evaluating any
5 medical opinion include the amount of relevant evidence that supports the opinion,
6 the quality of the explanation provided in the opinion, and the consistency of the
7 medical opinion with the record as a whole. *Lingenfelter*, 504 F.3d at 1042; *Orn*,
8 495 F.3d at 631. Plaintiff faults the ALJ for failing to identify what information in
9 the record supports this finding.² "The ALJ must do more than state conclusion.
10 He must set forth his own interpretations and explain why they, rather than the
11 doctors' are correct." *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014).
12 Prior to discussing Dr. Burdge's opinions, the ALJ considered and evaluated the
13 opinions of Dr. Veraldi, Dr. Cools, Dr. Fitterer, and Dr. Beaty. Tr. 28-29. The
14 ALJ credited specific portions of each doctor's opinion that contradicted Dr.
15 Burdge's findings. Reading the ALJ's discussion of Dr. Burdge's 2013 opinion in
16 context with the rest of the ALJ's opinion, the ALJ sufficiently identified other
17 information in the record that supports the ALJ's conclusion. Inconsistency with

18
19
20 ² Defendant fails to address this issue in its brief. ECF No. 21 at 8-9.

1 the record was a specific and legitimate reason for the ALJ to discredit Dr.
2 Burdge's 2013 opinion.

3 Second, the ALJ found Dr. Burdge was not familiar with the record. Tr. 31.
4 The extent to which a medical source is "familiar with the other information in [the
5 claimant's] case record" is relevant in assessing the weight of that source's medical
6 opinion. *See* 20 C.F.R. § 416.927(c)(6). As discussed *supra*, the ALJ credited the
7 opinions of Dr. Veraldi and Dr. Cools, who both reviewed the record as a whole
8 and gave medical opinions contrary to Dr. Burdge's opinions, which were not
9 based on a review of the record. Tr. 28-30. Thus, it was proper to discredit Dr.
10 Burdge's opinion in favor of medical sources who were more familiar with the
11 record.³

12 Third, the ALJ found Plaintiff's symptom reporting was inconsistent and his
13 examination behaviors may have been exaggerated. Tr. 31. Evidence that a
14 claimant exaggerated his symptoms is a clear and convincing reason to reject the
15 doctor's conclusions. *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). To

16 _____
17 ³ Plaintiff responds to the ALJ's finding by identifying objective examination
18 results Dr. Burdge relied on in forming his opinion. ECF No. 20 at 11. However,
19 this information does not address Dr. Burdge's lack of familiarity with the entire
20 medical record.

1 the extent the evidence could be interpreted differently, it is the role of the ALJ to
2 resolve conflicts and ambiguity in the evidence. *See Morgan*, 169 F.3d at 599-600;
3 *see also Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987). Dr. Burdge
4 noted “[b]ehavioral observations [of Plaintiff] were inconsistent with a severe
5 mental illness.” Tr. 489. Plaintiff counters that Dr. Burdge observed Plaintiff to
6 put forth adequate effort during this examination. ECF No. 20 at 11 (citing Tr.
7 492). This observation is not inconsistent with a finding that Plaintiff may have
8 exaggerated his symptoms. However, to the extent this issue is ambiguous, the
9 ALJ’s role was to resolve the ambiguity, and the ALJ reasonably concluded that
10 Dr. Burdge’s own admission of inconsistency made Dr. Burdge’s opinion less
11 credible. This was a specific and legitimate reason to discredit Dr. Burdge’s
12 opinion.

13 Finally, the ALJ gave Dr. Burdge’s opinion less weight because Plaintiff
14 was not forthcoming about his substance abuse during Dr. Burdge’s examination.
15 Tr. 31. An ALJ may properly reject a medical opinion that is rendered without
16 knowledge of a claimant’s substance abuse. *See Coffman v. Astrue*, 469 Fed.
17 App’x 609, 611 (9th Cir. 2012); *Serpa v. Colvin*, No. 11-cv-121-RHW, 2013 WL
18 4480016, *8 (E.D. Wa., Aug. 19, 2013). The record indicates Plaintiff was using
19 marijuana at the time of Dr. Burdge’s 2013 examination. Tr. 569. While Plaintiff
20 disclosed past substance abuse to Dr. Burdge during the 2013 examination, he

1 failed to report active marijuana use. Tr. 489. Furthermore, Plaintiff fails to
2 challenge this finding with specificity, thus the argument is waived. *See*
3 *Carmickle*, 533 F.3d at 1161 n.2. However, the Court finds upon independent
4 review that the ALJ's conclusion is supported by substantial evidence. The ALJ
5 did not err in discrediting Dr. Burdge's 2013 opinion.

6 3. *Faulder Colby, Ph.D.*

7 Dr. Colby reviewed the record on December 6, 2011, and opined the record
8 provided enough evidence to support a finding of psychotic disorder but not at the
9 level to qualify for DSHS benefits; that the record did not support a finding of
10 schizoaffective disorder; that substance abuse did not contribute significantly to
11 Plaintiff's functional impairments; and that Plaintiff's symptoms were expected to
12 last for 24 months. Tr. 412. The ALJ gave great weight to Dr. Colby's opinions
13 about psychotic disorder and schizoaffective disorder, but gave Dr. Colby's
14 remaining opinions little weight. Tr. 31. Because Dr. Colby's opinions were
15 contradicted by Dr. Veraldi, Tr. 650-66, 702-12, and Dr. Cools, Tr. 56-78, the ALJ
16 was required to provide specific and legitimate reasons for rejecting the opinions.
17 *Bayliss*, 427 F.3d at 1216.

18 The ALJ rejected Dr. Colby's opinions, in part, because they were based on
19 Dr. Burdge's 2011 opinion, which the ALJ properly rejected for being based on
20 Plaintiff's subjective symptom reports. Tr. 31. An ALJ may reject an opinion that

1 is based heavily on another physician's properly discredited opinion. *Paulson v.*
2 *Astrue*, 368 Fed. App'x 758, 760 (9th Cir. 2010) (unpublished). Because the Court
3 found *supra* that the ALJ provided legally sufficient reasons to discredit Dr.
4 Burdge's 2011 opinion, this was a proper reason to discredit Dr. Colby's opinion.⁴

5 Next, the ALJ found Dr. Colby's discredited opinions were inconsistent with
6 the record and did not account for Plaintiff's substance abuse. Tr. 31.
7 Specifically, the ALJ gave Dr. Colby's opinions less weight because Plaintiff was
8 not forthcoming about his drug use at the evaluation with Dr. Burdge, on which Dr.
9 Colby relied. Tr. 31. The record supports the ALJ's finding. *See Coffman*, 469
10 Fed. App'x at 611; *Serpa*, 2013 WL 4480016 at *8. The ALJ noted that both
11 Plaintiff and his grandmother denied any substance abuse history during the 2011
12 examination. Tr. 31; *see also* Tr. 414. As noted *infra*, there is substantial evidence
13 documenting Plaintiff's substance abuse issues. The ALJ reasonably relied on
14 Plaintiff's lack of candor regarding his substance abuse in giving Dr. Colby's

15 _____
16 ⁴ Plaintiff failed to challenge the ALJ's additional reasons for discrediting Dr.
17 Colby's opinion, ECF No. 20 at 9, thus, Plaintiff has waived argument on these
18 reasons. *See Carmickle*, 533 F.3d at 1161 n.2. However, the Court conducted an
19 independent review of the ALJ's decision and finds the ALJ's opinion is supported
20 by substantial evidence in the record.

1 opinion less weight, which was another specific and legitimate reason to reject the
2 assessed mental limitations.

3 4. *Mark Duris, Ph.D.*

4 Dr. Duris examined Plaintiff on October 21, 2009, and May 3, 2011, and
5 opined Plaintiff had mild limitations in his ability to understand, remember, and
6 persist in tasks by following simple instructions and learn new tasks; had moderate
7 limitations in his ability to perform tasks following complex instructions, be aware
8 of normal hazards, and take appropriate precautions; and had marked limitations in
9 his ability to perform routine tasks without undue supervision, communicate and
10 perform effectively in a work setting with public contact or limited public contact,
11 and maintain appropriate behavior in a work setting. Tr. 419-35. The ALJ gave
12 these opinions little weight.⁵ Tr. 34. Because Dr. Duris was contradicted by Dr.
13 Veraldi, Tr. 650-66, 702-12, and Dr. Cools, Tr. 56-78, the ALJ was required to

14 _____
15 ⁵ Plaintiff argues the ALJ improperly failed to discuss Dr. Duris' 2009 findings.
16 ECF No. 20 at 13. However, the ALJ considered the 2009 and 2011 examinations
17 together and collectively provided reasons for rejecting Dr. Duris' opinions. Tr.
18 33-34. Additionally, the Court notes the 2009 examination precedes the alleged
19 onset date and is thus of limited relevance to the ALJ's disability determination.
20 *Carmickle*, 533 F.3d at 1165.

1 provide specific and legitimate reasons for rejecting the opinions. *Bayliss*, 427
2 F.3d at 1216; *see also Widmark*, 454 F.3d at 1066-67.

3 First, the ALJ found Dr. Duris' opinions were inconsistent with his own
4 examination findings. Tr. 33-34. A medical opinion may be rejected by the ALJ if
5 it is conclusory, contains inconsistencies, or is inadequately supported. *Bray*, 554
6 F.3d at 1228; *Thomas*, 278 F.3d at 957. Moreover, a physician's opinion may be
7 rejected if it is unsupported by the physician's treatment notes. *See Connett*, 340
8 F.3d at 875 (affirming ALJ's rejection of physician's opinion as unsupported by
9 physician's treatment notes). Here, the ALJ noted Dr. Duris opined in 2011 that
10 Plaintiff had several moderate and marked functional limitations. Tr. 33-34.

11 However, Dr. Duris' objective mental status examination showed generally normal
12 results, including a cooperative attitude, appropriate dress, adequate grooming,
13 appropriate eye contact, situational orientation, serial subtraction within normal
14 limits, spelling forward and backward within normal limits, and speech within
15 normal limits. Tr. 435. While Dr. Duris did observe some results not within
16 normal limits, Dr. Duris prefaced his report by noting Plaintiff "engaged in
17 *significant* over reporting of symptoms." Tr. 429 (emphasis in original). Dr. Duris
18 also noted Plaintiff's personality assessment inventory (PAI) results were invalid.
19 *Id.* Plaintiff argues the ALJ improperly considered why the PAI results were
20 invalid. ECF No. 20 at 13-14. Notwithstanding why they were invalid, Dr. Duris

1 relied on test results he deemed invalid or questionable. Tr. 429, 435. This lack of
2 support from Dr. Duris' own examination of Plaintiff were a specific and
3 legitimate reason to discredit Dr. Duris' opinions.

4 Second, the ALJ found Dr. Duris' opinions were based heavily on Plaintiff's
5 self-reports. Tr. 34. A physician's opinion may be rejected if it based on a
6 claimant's subjective complaints which were properly discounted. *Tonapetyan*,
7 242 F.3d at 1149; *Morgan*, 169 F.3d at 602; *Fair*, 885 F.2d at 604. As discussed
8 *infra*, the ALJ gave several legally sufficient reasons for rejected Plaintiff's
9 symptom testimony. Moreover, Dr. Duris' own test results indicated Plaintiff was
10 over-reporting his symptoms. Tr. 429. This was a specific and legitimate reason
11 to discredit Dr. Duris' opinions.

12 Additionally, the ALJ found Dr. Duris' opinions were not consistent with the
13 record as a whole, that Dr. Duris' opinions were based on exaggerated examination
14 results, that Dr. Duris was unfamiliar with the case record, and that Dr. Duris
15 inconsistently noted Plaintiff both did and did not have a diagnosis of substance
16 abuse or dependence. Tr. 33-34. Plaintiff failed to challenge these reasons in his
17 opening brief, and thus waived argument on these findings. *See Carmickle*, 533
18 F.3d at 1161 n.2. The Court finds on independent review that the ALJ's given
19 reasons are supported by substantial evidence. The ALJ did not err in discrediting
20 Dr. Duris' opinions.

1 5. *Catherine MacLennan, Ph.D.*

2 Dr. MacLennan examined Plaintiff on December 6, 2010, and opined
3 Plaintiff was not able to reason well or organize his thinking; had poor judgment
4 based on history; had poor insight into his own condition; had difficulty following
5 and participating in conversation; was able to understand what is said to him if he
6 is attending; was able to sustain concentration, pace, and persistence for a brief
7 time; was able to sustain focused attention long enough to ensure the timely
8 completion of tasks; had difficulty getting along with others; would have difficulty
9 getting along with others in a work setting; did not cope well with stress; was
10 unlikely to respond appropriately to changes in the workplace; and was not
11 adaptive. Tr. 343-47. The ALJ credited Dr. MacLennan's findings of limitations
12 in social functioning, and included in the RFC limitations to no interaction with the
13 general public and limited interactions with coworkers and supervisors. Tr. 24, 30.
14 However, the ALJ gave little weight to Dr. MacLennan's remaining opinions.
15 Because Dr. MacLennan was contradicted by Dr. Veraldi, Tr. 650-66, 702-12, and
16 Dr. Cools, Tr. 56-78, the ALJ was required to provide specific and legitimate
17 reasons for rejecting the opinions. *Bayliss*, 427 F.3d at 1216; *see also Widmark*,
18 454 F.3d at 1066-67.

19 First, the ALJ found Dr. MacLennan's opinions were inconsistent with the
20 record as a whole, including Dr. MacLennan's observation that Plaintiff

1 presentation during her examination was “‘much more’ disorganized and agitated
2 than his presentation for another examiner on several occasions.” Tr. 30. Relevant
3 factors to evaluating any medical opinion include the amount of relevant evidence
4 that supports the opinion, the quality of the explanation provided in the opinion,
5 and the consistency of the medical opinion with the record as a whole.
6 *Lingenfelter*, 504 F.3d at 1042; *Orn*, 495 F.3d at 631.

7 Here, the ALJ noted Dr. MacLennan observed Plaintiff to be significantly
8 more disorganized and agitated than he appeared in the medical records she
9 observed. Tr. 30; *compare* Tr. 346 (Plaintiff appears quite disorganized and
10 agitated) *with* Tr. 333-36 (Plaintiff appears calm and cooperative with bright
11 mood). To counter this finding, Plaintiff identifies later examinations where
12 Plaintiff was observed to be angry or agitated. ECF No. 20 at 15-16. However,
13 Dr. MacLennan’s own observation of inconsistency was limited to the medical
14 records she reviewed. Tr. 343. Plaintiff’s evidence does not undermine Dr.
15 MacLennan’s observation as it relates to the evidence she reviewed. Because Dr.
16 MacLennan indicated that she based her opinion on Plaintiff’s presentation during
17 the examination, Tr. 346, and because Dr. MacLennan also observed that
18 Plaintiff’s presentation during the examination was inconsistent with the medical
19 evidence she reviewed, *id.*, the ALJ reasonably concluded that Dr. MacLennan’s
20 opinions were not supported by evidence in the record.

1 The ALJ also noted other components of Dr. MacLennan's report that were
2 not supported by the record. For example, Plaintiff reported to Dr. MacLennan
3 that he experienced hallucinations. Tr. 345. Yet Plaintiff regularly denied
4 hallucinations during other medical examinations. *See* Tr. 333 (August 9, 2010);
5 Tr. 404 (June 22, 2011); Tr. 402 (August 22, 2011); Tr. 490 (September 12, 2013);
6 Tr. 576 (November 12, 2013); Tr. 507 (April 11, 2014); Tr. 510 (April 17, 2014);
7 Tr. 538 (October 13, 2014); Tr. 678 (February 23, 2015). This lack of longitudinal
8 support is a specific and legitimate reason to discredit Dr. MacLennan's findings.

9 Second, the ALJ found Dr. MacLennan's opinions relied heavily on
10 Plaintiff's subjective symptom reports. Tr. 30. A physician's opinion may be
11 rejected if it based on a claimant's subjective complaints which were properly
12 discounted. *Tonapetyan*, 242 F.3d at 1149; *Morgan*, 169 F.3d at 602; *Fair*, 885
13 F.2d at 604. As discussed *infra*, the ALJ gave several legally sufficient reasons for
14 rejecting Plaintiff's symptom testimony. Dr. MacLennan's reliance on Plaintiff's
15 subjective symptom complaints was a specific and legitimate reason to discredit
16 her opinions.

17 Finally, the ALJ noted Dr. MacLennan's opinions were based on Plaintiff's
18 inconsistently-reported history of drug use. Tr. 30. *See Coffman*, 469 Fed. App'x
19 at 611 (affirming ALJ's rejection of examining psychologist's opinion, in part, due
20 to the fact that "plaintiff periodically concealed" his substance abuse from

1 providers); *Serpa*, 2013 WL 4480016 at *8 (affirming ALJ's rejection of a
2 physician's opinion because it was made without knowledge of the claimant's
3 substance abuse and narcotic-seeking behavior). Plaintiff reported "previous, but
4 not current drug use" to Dr. MacLennan. Tr. 346. But other reports in the record
5 indicate Plaintiff was using marijuana during this time. *See* Tr. 569 (2013 report
6 Plaintiff has used marijuana since high school).⁶ Plaintiff also reported to Dr.
7 MacLennan that he first tried methamphetamines in 2006 and was not currently
8 using methamphetamines. Tr. 343, 346. However, at a September 2010 medical
9 appointment, Plaintiff reported having recently tried methamphetamines for the
10 first time. Tr. 337. That Dr. MacLennan based her report on Plaintiff's
11 inconsistently reported history of drug use was a specific and legitimate reason to
12 discredit her opinions. The ALJ did not err in discrediting Dr. MacLennan's
13 opinions.

17 ⁶ Plaintiff accurately notes that the ALJ cited a report that Plaintiff used marijuana
18 during, rather than after, high school. ECF No. 20 at 16. However, other reports
19 in the record support the ALJ's finding, so any error in this inaccurate citation is
20 harmless. *Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006).

1 6. *Donna Veraldi, Ph.D.*

2 Dr. Veraldi reviewed the record on February 16, 2015, Tr. 650-66, and
3 testified at the hearing on March 2, 2015, Tr. 702-12. Dr. Veraldi opined that
4 Plaintiff's diagnoses of schizoaffective disorder, bipolar disorder, and attention
5 deficit disorder were not substantiated by objective findings in the record; Plaintiff
6 had mild functional limitations in his activities of daily living; Plaintiff had mild
7 functional limitations in maintaining concentration, persistence, or pace; Plaintiff
8 had moderate to marked limitations in maintaining social functioning; Plaintiff had
9 experienced no episodes of decomposition; and that Dr. Veraldi was unable to
10 separate the effects of Plaintiff's marijuana use from Plaintiff's mental health
11 symptoms. Tr. 650-62. Regarding Plaintiff's moderate to marked limitations in
12 social functioning, Dr. Veraldi elaborated Plaintiff "can get angry, rude, use
13 obscene language, he has problems relating." Tr. 705. The ALJ gave Dr.
14 Veraldi's opinions great weight. Tr. 28. Plaintiff asserts the ALJ failed to
15 adequately incorporate Dr. Veraldi's opinion about moderate to marked limitations
16 in social functioning into the RFC. ECF No. 20 at 16-17.

17 "[T]he ALJ is responsible for translating and incorporating clinical findings
18 into a succinct RFC." *Rounds v. Comm'r Soc. Sec. Admin.*, 807 F.3d 996, 1006
19 (9th Cir. 2015). "[A]n ALJ may interpret assessed limitations into an RFC
20 assessment without repeating each functional limitation verbatim in the RFC

1 assessment provided that the limitations contained in the RFC assessment
2 accurately capture the claimant's level of functioning supported by the evidence.”
3 *Upton v. Colvin*, 2016 WL 1060194 at *3 (E.D. Cal. March 17, 2016) (citing
4 *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1173-74 (9th Cir. 2008)). Where
5 evidence in the record is subject to more than one rational interpretation, the Court
6 defers to the ALJ's conclusion. *Batson*, 359 F.3d at 1198.

7 Here, Dr. Veraldi opined Plaintiff has moderate to marked limitations in
8 social functioning. Tr. 660, 705. The ALJ incorporated this limitation into the
9 RFC by limiting Plaintiff to no interaction with the general public; work around
10 co-workers without close cooperation in performing job tasks; and occasional
11 supervision but no over-the-shoulder type of supervision. Tr. 24. Plaintiff argues
12 the ALJ was required to incorporate Dr. Veraldi's comments about Plaintiff's
13 anger and obscene language into the RFC, and that had the ALJ done so, the
14 vocational expert's testimony should have compelled the ALJ to find Plaintiff
15 disabled.⁷ ECF No. 20 at 16-17. However, the ALJ was not required to
16 incorporate Dr. Veraldi's exact commentary into the RFC. *See Stubbs-Danielson*,
17 539 F.3d at 1173-74. In limiting Plaintiff to certain kinds of interactions with

18
19 ⁷ The vocational expert testified that an individual who uses obscene language and
20 gets into fights on the job would not be tolerated by employers. Tr. 119.

1 others in a work setting, the ALJ reasonably interpreted Dr. Veraldi's medical
2 opinion and translated it into a succinct RFC. *Rounds*, 807 F.3d at 1006. This
3 interpretation of the evidence is further bolstered by Dr. Cools' opinion that
4 Plaintiff is able to conform his behavior when it benefits him. Tr. 28-29, 70-71.
5 Even if Plaintiff offers a different interpretation of the medical opinion evidence,
6 the ALJ's interpretation is reasonable and thus should be upheld. *Batson*, 359 F.3d
7 at 1198. The ALJ did not err in interpreting Dr. Veraldi's opinion.

8 Plaintiff generally faults the ALJ for discrediting the opinions of Plaintiff's
9 examining physicians discussed *supra* in favor of opinions rendered by reviewing
10 physicians Dr. Cools, Dr. Fitterer, and Dr. Beaty. ECF No. 20 at 5-18. An ALJ
11 must provide specific and legitimate reasons to reject contradicted medical opinion
12 evidence, but the same standard does not apply when the ALJ credits opinion
13 evidence. *See Orteza v. Shalala*, 50 F.3d 748, 750 (9th Cir. 1995); *Bayliss*, 427
14 F.3d at 1216. As discussed *supra*, the ALJ provided specific and legitimate
15 reasons for discrediting Plaintiff's examining physicians. *Garrison*, 759 F.3d at
16 1012. Plaintiff is not entitled to remand on these grounds.

17 7. *Kathy Hevly, PMHNP*

18 Ms. Hevly treated Plaintiff through January 2012, Tr. 400, and opined on
19 August 27, 2010, that Plaintiff had moderate impairments in his ability to
20 understand, remember, and follow complex instructions, learn new tasks, interact

1 appropriately in public contacts, respond appropriately to and tolerate the pressures
2 and expectations of a normal work setting, care for personal hygiene and
3 appearance, and maintain appropriate behavior in a work setting; marked
4 impairments in his ability to exercise judgment and make decisions and relate
5 appropriately to coworkers and supervisors; is not limited in his ability to perform
6 routine tasks or understand, remember, and follow simple one- to two-step
7 instructions; had a good prognosis if he is able to abstain from substances and be
8 compliant with psychiatric medications; his barriers to employment would be
9 minimized or eliminated with vocational training or services; when he complied
10 with medication, he showed improved mood, less agitation, improved ability to
11 show restraint and regard for others; and that Plaintiff was difficult to accurately
12 diagnose because of his history of substance abuse. Tr. 436-44. The ALJ gave
13 great weight to Ms. Hevly's opinions related to substance abuse, no limitations in
14 performing routine tasks or tasks by following simple instructions, and
15 improvement in functioning when compliant with treatment, but gave her
16 remaining opinions little weight. Tr. 33. As a PMHNP, Ms. Hevly is considered
17 an "other source" under the regulations. 20 C.F.R. § 416.913(d) (2013). Thus, the
18 ALJ was required to cite germane reasons for rejecting her opinions. *See Dodrill*
19 *v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993).

1 First, the ALJ found Ms. Hevly's remaining opinions were inconsistent or
2 not supported by the longitudinal record, including the medical record
3 documenting Plaintiff's daily activities. Inconsistency with medical evidence is a
4 germane reason for rejecting lay witness evidence. *Turner v. Comm'r of Soc. Sec.*,
5 613 F.3d 1217, 1223-34 (9th Cir. 2010); *Lewis v. Apfel*, 236 F.3d 503, 511 (9th
6 Cir. 2001). Plaintiff challenges this conclusion, but fails to identify with
7 specificity supporting evidence for this position.⁸ Furthermore, the record supports
8 the ALJ's finding. For example, Dr. Cools testified that Plaintiff's anxiety and
9 depression are controllable with medication, to the point Dr. Cools did not believe
10 they constituted severe impairments, and that Plaintiff's behavior was voluntary.
11 Tr. 74-75. Additionally, inconsistency with a claimant's daily activities is a
12 germane reason to reject lay testimony. *Carmickle*, 533 F.3d at 1163-64; *Lewis*,
13 236 F.3d at 512. The ALJ observed that Ms. Hevly's opinion that Plaintiff is
14 moderately impaired in learning new tasks, Tr. 439, was inconsistent with
15 Plaintiff's testimony that he enjoys playing a variety of video games, Tr. 102. Tr.

16 _____
17 ⁸ Plaintiff refers the Court to "virtually every medical opinion" in support of this
18 position. ECF No. 20 at 19. However, as discussed *supra*, the ALJ provided
19 specific and legitimate reasons to discount many of the medical opinions in the
20 record.

33. These inconsistencies were germane reasons to discredit Ms. Hevly's remaining opinions.

The ALJ also discredited Ms. Hevly's remaining opinions for being based on Plaintiff's subjective symptom claims and for not clearly indicating whether Plaintiff's limitations would remain if Plaintiff were compliant with treatment. Tr. 33. Plaintiff fails to challenge these reasons, thus, argument on these reasons is waived. *Kim*, 154 F.3d at 1000; *Carmickle*, 533 F.3d at 1161 n.2. Regardless, the Court finds the ALJ's rationale is supported by substantial evidence. The ALJ did not err in rejecting Ms. Hevly's opinions.

8. *Eric Aronsohn, PA-C*

Mr. Aronsohn treated Plaintiff between April 2013 and January 2015. Tr. 613-42. On October 21, 2014, Mr. Aronsohn opined Plaintiff was mildly limited in his ability to carry out very short simple instruction; was moderately to markedly limited in understanding and memory; was markedly limited in sustained concentration and pace; was markedly to severely limited in social interaction and adaption; was likely to be off-task for over thirty percent of a forty hour work week; and was likely to miss four or more days of work per month. Tr. 449-51. The ALJ gave Mr. Aronson's opinions little weight. Tr. 32-33. As a PA-C, Mr. Aronsohn is considered an "other source" under the regulations. 20 C.F.R. §

1 416.913(d) (2013). Thus, the ALJ was required to cite germane reasons for
2 rejecting his opinions. *See Dodrill*, 12 F.3d at 919.

3 First, the ALJ found Mr. Aronsohn's opinions were inconsistent or not
4 supported by the longitudinal record. Inconsistency with medical evidence is a
5 germane reason for rejecting lay witness evidence. *Turner*, 613 F.3d at 1223-34;
6 *Lewis*, 236 F.3d at 511. Here, the ALJ failed to offer specific examples of
7 evidence in the record that failed to support Mr. Aronsohn's conclusions.
8 However, the ALJ provided several other germane reasons to discount Mr.
9 Aronsohn's opinion, thus, this error was inconsequential to the overall disability
10 determination. *See Stout*, 454 F.3d at 1055. Therefore, any such error is harmless.

11 Second, the ALJ gave Mr. Aronsohn's opinion less weight because Mr.
12 Aronsohn is not a psychiatric specialist. Tr. 32. The specialty of a medical source
13 is a relevant factor in weighing a medical opinion. 20 C.F.R. § 416.927(c)(5)
14 (2012). Mr. Aronsohn wrote in his own treatment notes, in response to Plaintiff's
15 psychiatric symptom complaints, that he is not a psychiatric provider and practices
16 in family medicine. Tr. 626, 631. The ALJ reasonably discounted Mr. Aronsohn's
17 opinions in favor of Dr. Cools and Dr. Veraldi, who are both psychiatric
18 specialists. Tr. 199, 248-52. This was a germane reason to discount Mr.
19 Aronsohn's opinions.

1 Third, the ALJ gave Mr. Aronsohn's opinion less weight because of the
2 incomplete nature of his treatment relationship with Plaintiff. Tr. 32. An ALJ is
3 permitted to consider the length and nature of a treatment relationship in evaluating
4 the opinions of "other sources." SSR 06-03P, *available at* 2006 WL 2329939 at *4
5 (Aug. 9, 2006), *see also Koenig v. Colvin*, 2014 WL 5781764 at *11 (E.D. Wash.
6 Nov. 6, 2014). The ALJ noted Mr. Aronsohn's opinion was based on a history of
7 four examinations over two years, that Plaintiff's examinations were conducted
8 mostly on a walk-in basis, and that Plaintiff "no showed" for multiple
9 appointments with Mr. Aronsohn. Tr. 32. The ALJ noted Mr. Aronsohn also had
10 an incomplete treatment relationship with Plaintiff because of Plaintiff's failure to
11 disclose information to Mr. Aronsohn. *Id.* Although Mr. Aronsohn prescribed
12 Seroquel for Plaintiff in March 2014, Plaintiff stopped taking the Seroquel in May
13 2014 and did not inform Mr. Aronsohn of this decision until October 2014. *Id.*
14 The incomplete nature of this treatment relationship was a germane reason for the
15 ALJ to discredit Mr. Aronsohn's opinion. Furthermore, Plaintiff fails to challenge
16 these conclusions, thus, argument is waived. *Kim*, 154 F.3d at 1000; *Carmickle*,
17 533 F.3d at 1161 n.2.

18 Finally the ALJ discounted Mr. Aronsohn's opinion because it was not
19 supported by treatment records. An ALJ may consider the degree to which the
20 source provides relevant supporting evidence in evaluating an "other source"

1 opinion. SSR 06-03P, *available at* 2006 WL 2329939 at *4. The ALJ noted that
2 Dr. Aronsohn qualified his own treatment notes with caveats that he is not a
3 psychiatric provider, thus undermining his own findings of psychiatric limitations.
4 Tr. 32. Additionally, the ALJ credited Dr. Veraldi's opinion that Mr. Aronsohn's
5 treatment notes do not support his diagnoses and opinion. Tr. 32-33 (citing Tr.
6 711-12). Furthermore, Plaintiff fails to challenge these conclusions, thus,
7 argument is waived. *Kim*, 154 F.3d at 1000; *Carmickle*, 533 F.3d at 1161 n.2. The
8 ALJ provided germane reasons to discredit Mr. Aronsohn's opinion.

9 **B. Plaintiff's Symptom Testimony**

10 Plaintiff faults the ALJ for failing to rely on reasons that were clear and
11 convincing in discrediting his symptom claims. ECF No. 20 at 20-21. An ALJ
12 engages in a two-step analysis to determine whether a claimant's testimony
13 regarding subjective pain or symptoms is credible. "First, the ALJ must determine
14 whether there is objective medical evidence of an underlying impairment which
15 could reasonably be expected to produce the pain or other symptoms alleged."
16 *Molina*, 674 F.3d at 1112 (internal quotation marks omitted). "The claimant is not
17 required to show that his impairment could reasonably be expected to cause the
18 severity of the symptom he has alleged; he need only show that it could reasonably
19 have caused some degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586,
20 591(9th Cir. 2009) (internal quotation marks omitted).

1 Second, “[i]f the claimant meets the first test and there is no evidence of
2 malingering, the ALJ can only reject the claimant’s testimony about the severity of
3 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
4 rejection.” *Ghanim*, 763 F.3d at 1163 (quoting *Lingenfelter*, 504 F.3d at 1036).
5 “General findings are insufficient; rather, the ALJ must identify what testimony is
6 not credible and what evidence undermines the claimant’s complaints.” *Id.*
7 (quoting *Lester*, 81 F.3d at 834); *Thomas*, 278 F.3d at 958 (“[T]he ALJ must make
8 a credibility determination with findings sufficiently specific to permit the court to
9 conclude that the ALJ did not arbitrarily discredit claimant’s testimony.”). “The
10 clear and convincing [evidence] standard is the most demanding required in Social
11 Security cases.” *Garrison*, 759 F.3d at 1015 (quoting *Moore v. Comm’r of Soc.*
12 *Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

13 In making an adverse credibility determination, the ALJ may consider, *inter*
14 *alia*, (1) the claimant’s reputation for truthfulness; (2) inconsistencies in the
15 claimant’s testimony or between his testimony and his conduct; (3) the claimant’s
16 daily living activities; (4) the claimant’s work record; and (5) testimony from
17 physicians or third parties concerning the nature, severity, and effect of the
18 claimant’s condition. *Thomas*, 278 F.3d at 958-59.

1 The ALJ found that Plaintiff's medically determinable impairments could
2 cause Plaintiff's alleged symptoms, but that Plaintiff's testimony about the severity
3 of his symptoms was not entirely credible. Tr. 26.

4 *1. Lack of Supporting Medical Evidence*

5 First, the ALJ found Plaintiff's testimony was not supported by the medical
6 evidence. Tr. 26. Minimal objective evidence is a factor which may be relied
7 upon in discrediting a claimant's testimony, although it may not be the only factor.
8 *Burch*, 400 F.3d at 680. Plaintiff challenges the ALJ's conclusion; however, as
9 discussed *supra*, the ALJ provided specific and legitimate reasons to discredit
10 many of the medical opinions in the record upon which Plaintiff's argument relies.
11 Even if the ALJ erred in failing to identify specific pieces of evidence in the record
12 that failed to corroborate Plaintiff's alleged level of impairment, such error is
13 inconsequential to the overall disability determination because the ALJ offered
14 several other clear and convincing reasons to discredit Plaintiff's testimony. *See*
15 *Stout*, 454 F.3d at 1055. Therefore, any such error is harmless.

16 *2. Improvement with Treatment*

17 Second, the ALJ found Plaintiff's symptoms improved with treatment. Tr.
18 26. The effectiveness of medication and treatment is a relevant factor in
19 determining the severity of a claimant's symptoms. 20 C.F.R. § 416.929(c)(3)
20 (2011); *see Warre v. Comm'r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir.

1 2006) (conditions effectively controlled with medication are not disabling for
2 purposes of determining eligibility for benefits) (internal citations omitted); *see*
3 *also Tommasetti v. Astrue*, 533 F.3d 1035 1040 (9th Cir. 2008) (a favorable
4 response to treatment can undermine a claimant’s complaints of debilitating pain or
5 other severe limitations).

6 The ALJ noted that Plaintiff regularly showed signs of improvement when
7 he was compliant with his prescribed medications. Tr. 26; *see, e.g.*, Tr. 439
8 (Plaintiff showed less agitation, improved mood, and improved ability to show
9 restraint and regard for others when taking Depakote); Tr. 484 (Plaintiff “becomes
10 more functional” when compliant with medication); Tr. 337 (Plaintiff reports being
11 at his best when taking Xanax); Tr. 640 (Plaintiff “has been[] doing much better on
12 atypical meds”). Plaintiff challenges this finding by noting Plaintiff claimed he
13 was hearing voices and was observed to be easily agitated after taking lithium for
14 several months. EF No. 20 at 22. Even if Plaintiff can identify evidence that can
15 be interpreted more favorably to Plaintiff’s position, the evidence is susceptible to
16 more than one rational interpretation, and therefore the ALJ’s ultimate conclusion
17 must be upheld. *See Burch*, 400 F.3d at 679. That Plaintiff’s symptoms improved
18
19
20

1 with treatment was a clear and convincing reason to discredit Plaintiff's symptom
2 testimony.

3 3. *Failure to Follow Treatment Recommendations*

4 Third, the ALJ discredited Plaintiff's symptom testimony because of
5 Plaintiff's significant history of failing to follow through with treatment
6 recommendations. Tr. 26-27. It is well-established that unexplained or
7 inadequately explained non-compliance with treatment reflects on a claimant's
8 credibility. *See Molina*, 674 F.3d at 1113-14; *Tommasetti*, 533 F.3d at 1039; *see*
9 *also Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996) (an ALJ may consider a
10 claimant's unexplained or inadequately explained failure to follow a prescribed
11 course of treatment when assessing a claimant's credibility).

12 The ALJ noted Plaintiff failed to appear for fifteen of thirty-one counseling
13 treatment appointments and thirteen of twenty-four anger management sessions.
14 Tr. 26; *see* Tr. 453-560, 668-95. The ALJ also noted Plaintiff repeatedly took
15 himself off his prescribed medications. Tr. 26; *see* Tr. 400 (Plaintiff "has a
16 significant past for lack of engagement and non compliance [sic]"); Tr. 404
17 (Plaintiff has "been off the medication for several weeks"); Tr. 460 (Plaintiff not
18 compliant with prescribed medication); Tr. 473 (Plaintiff has "failed to maintain
19 any long-term compliance with medication regimen").
20

1 Plaintiff counters that the ALJ failed to consider Plaintiff's given reasons for
2 failing to comply with treatment recommendations: that he disliked the side effects
3 of medications, lacked transportation to get to appointments, and was ejected from
4 therapy sessions. ECF No. 20 at 20. However, the ALJ did consider Plaintiff's
5 offered justifications, and accurately noted that the record shows Plaintiff
6 inconsistently gave these excuses for treatment noncompliance at different times.
7 Tr. 26; *see, e.g.*, Tr. 523 (Plaintiff indicated in May 2014 that he could not attend
8 treatment due to work during harvest season and fear of angry outbursts); Tr. 527
9 (Plaintiff indicated in October 2014 that he was unable to attend treatment due to
10 harvest, incarceration, and transportation issues, but did not mention angry
11 outbursts); Tr. 714 (Plaintiff testified he worked for only one and a half months
12 during the harvest season in 2014). In evaluating the credibility of symptom
13 testimony, the ALJ may utilize ordinary techniques of credibility evaluation,
14 including considering prior inconsistent statements. *Smolen*, 80 F.3d at 1284. The
15 ALJ did not err in this analysis.

16 4. *Inconsistent Statements*

17 Fourth, the ALJ found Plaintiff made several inconsistent statements
18 regarding his substance use and his work history. Tr. 26-28. In evaluating the
19 credibility of symptom testimony, the ALJ may utilize ordinary techniques of
20 credibility evaluation, including considering prior inconsistent statements. *Smolen*,

1 80 F.3d at 1284. Moreover, it is well-settled in the Ninth Circuit that conflicting or
2 inconsistent statements concerning drug use can contribute to an adverse
3 credibility finding. *Thomas*, 278 F.3d at 959.

4 Here, the ALJ identified several inconsistencies in Plaintiff's reporting of his
5 drug use.⁹ Plaintiff denied substance abuse in certain medical examinations. *See*
6 Tr. 423 (denies recent substance abuse on October 21, 2009); Tr. 414 (denies any
7 substance abuse history on November 10, 2010); Tr. 429 (denies any substance
8 abuse history on May 3, 2011). However, Plaintiff endorsed varying levels of
9 substance abuse in other examinations. *See* Tr. 337 (tried methamphetamines in
10 2010); Tr. 343 (tried methamphetamines in 2006; admits to infrequent marijuana
11 use on December 6, 2010; says he used to be a "pot head" and a "meth addict");
12 Tr. 400 (established care with medical marijuana provider in December 2011); Tr.
13 569 (admits to marijuana use since high school on November 12, 2013); Tr. 586
14 (admits to heavy methamphetamine use and alcohol abuse while in high school).

15
16
17 ⁹ Contrary to Plaintiff's characterization, ECF No. 20 at 21, the ALJ did not
18 discredit Plaintiff because of Plaintiff's drug use. Furthermore, the ALJ was not
19 required to complete a DAA analysis because the ALJ's analysis ended at step
20 four. *See Bustamante v. Massanari*, 262 F.3d 949, 955 (9th Cir. 2001).

1 These inconsistencies in Plaintiff's reporting are a clear and convincing reason to
2 discredit Plaintiff's testimony.

3 The ALJ also noted Plaintiff inconsistently reported his work history. Tr.
4 27-28. Plaintiff reported to medical providers that his harvest work started in May
5 2014, Tr. 523, and ended in October 2014, Tr. 527. However, Plaintiff testified
6 that the 2014 harvest season lasted only one and a half months. Tr. 714. Although
7 Plaintiff reported no earnings prior to 2011 (when Plaintiff would have been 20-21
8 years old), Tr. 292-93, Plaintiff reported he worked on-call as a roofer while in
9 high school, Tr. 344. Even if the record is unclear as to whether Plaintiff's other
10 work history before 2011 was compensated, and thus inconsistent with the
11 earnings report, the ALJ identified several inconsistencies that provide clear and
12 convincing reasons to discredit Plaintiff's testimony.

13 5. *Ability to Work Despite Impairments*

14 Finally, the ALJ observed Plaintiff was able to work during the alleged
15 period of disability, sometimes at SGA levels. Tr. 26-28. Working with an
16 impairment supports a conclusion that the impairment is not disabling. *See Drouin*
17 *v. Sullivan*, 966 F.2d 1255, 1258 (9th Cir. 1992). Plaintiff reported working twelve
18 hours per day driving a combine during the harvest season in 2013 and 2014. Tr.
19 713-16. Plaintiff also reported driving a combine and working in a corn factory in
20 2012, Tr. 79-80, and picking apples in 2011, Tr. 722-23. Plaintiff testified at the

1 2015 administrative hearing that he actively looks for jobs as a daily activity. Tr.
2 724. Indeed, Plaintiff testified at the 2013 administrative hearing that he never
3 indicated that he could not work, and that his family filed his application for
4 disability benefits. Tr. 78. That Plaintiff was able to perform these jobs, despite
5 his impairments, supports the ALJ's conclusion that Plaintiff's alleged
6 impairments were not as severe as Plaintiff's testimony indicated. This was
7 another clear and convincing reason for the ALJ to discredit Plaintiff's testimony.

8 **CONCLUSION**

9 After review, the Court finds that the ALJ's decision is supported by
10 substantial evidence and free of harmful legal error.

11 **IT IS ORDERED:**

12 1. Plaintiff's motion for summary judgment (ECF No. 20) is **DENIED**.

13 2. Defendant's motion for summary judgment (ECF No. 21) is **GRANTED**.

14 The District Court Executive is directed to file this Order, enter **JUDGMENT**
15 **FOR THE DEFENDANT**, provide copies to counsel, and **CLOSE THE FILE**.

16 DATED February 23, 2018.

17 s/Mary K. Dimke
18 MARY K. DIMKE
19 UNITED STATES MAGISTRATE JUDGE
20